IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 792 OF 1993

1. Shrikant Vishnu Pandit
2. Sau. Swapnila Shrikant Pandit
3. Master Yatin Shrikant Pandit ..Appellants

versus

1. Dhawalu Gopala Choudhari
2. Nanakchand Thanchand Punjabi
3. The New India Assurance Company Ltd. ..Respondents

Mr. S. S. Kulkarni for the Appellants.

None for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 13TH JANUARY,2005

ORAL ORDER :

1. Heard leanred counsel for the appellants. Nobody is present for the respondents, though they are served.

2. Young daughter of 14 years of age by name Dhanashri of the appellant nos. 1 and 2 and sister of appellant No.3 died in an accident caused by truck. The appellants claimed compensation of

Rs.3,25,750/-. MACT Nashik granted meager amount i.e. Rs.55,000/= for shock, sufferings, mental pain and agony and loss of future status and name and fame which the claimants would have achieved, had Dhanashri being given chance by the destiny to prove her merit in future. Nothing was given by the MACT towards propspective earnings.

3. Counsel for the appellants drew my attention to the judgment of the Supreme Court reported in **(1998)5 Supreme Court Cases 359, Shanti Bai and others vs. Charan Singh and others.** In that case the victim was 18 years of age and belonged to a labour class and even his younger brother was doing the labour work getting Rs.10/- per day. In the accident the victim was run over by truck insured by the respondents - insurance company. Claim petition for Rs.10 lacs was filed. Tribunal awarded Rs.40,000/- only, High court dismissed the First Appeal and the Supreme Court partly allowed the appeal and held :

> **"...In our view, as the victim was aged 18 years and belonged to a labour class and even his younger brother was doing labour work and getting Rs.10 per day, it is obvious that the deceased, had he survived, would have earned a substantial amount per**

month for the benefit of the family as the appellants are his destitute mother and her minor children. In our view, total compensation of Rs.40,000/- is too meagre. Even taking a reasonable view of the amount which the deceased would have earned, had he survived, considering the future economic prospects of the deceased we deem it fit to increase the award to a lump sum amount of Rs.1,50,000/-. Meaning thereby, the appellant will be entitled to an additional amount of Rs.1,10,000/- as Rs.40,000/- have already been awarded by the Tribunal. This additional amount of Rs.1,10,000/- shall be deposited by the respondent Insurance company with 12% interest from the date of the claim petition till actual deposit....."

4. Counsel for the appellants contended that if Supreme Court has awarded Rs.1,10,000/- for a labour class family in addition to Rs.40,000/= considering the future earning prospects of Rs.10/- per day then in the present case when there is substantial material on record to hold that deceased Dhanashri was most bright and intelligent student of the school, she was chosen by her class teacher to be amongst 10 to be specially attended too, that she

was participating in different competitions and competitive examinations including singing, painting and she was bright student in the class. She was also interested in sports, music, chess, having number of certificates in competition. She was also a member of RSP and was disciplined student and therefore if such a bright young girl dies and from whom the appellants could have strong expectations, getting support in future etc., the Tribunal should have granted substantial amount towards compensation on the ground of loss of future income.

5. I find considerable force in the arguments of the learned Counsel for the appellants. If the Supreme Court have considered the earning of the deceased at Rs.10/- per day and awarded Rs.1,50,000/- to the parents of the victim because of his death at the age of 18 years then for the loss of such distinguished intelligent girl, the appellants should also have been adequately compensated. It is true that the appellants have not divided the claim for compensation of Rs.3,25,750/- under different heads, but looking to the aforesaid judgment of the Supreme court, this appeal is required to be partly allowed by awarding Rs.1,50,000/= as loss of prospective earning and assistance to the family by the young girl. Hence, the following order :

ORDER

. Appeal is partly allowed. In addition to whatever has been granted by MACT the respondents will be liable to pay to the appellants Rs.1,50,000/= with interest at the rate of 12% per annum from the date of the claim petition till realisation of the amount. Certified copy expedited.

13.1.2005 (D.G. DESHPANDE,J.)